

Pursuant to Ind.Appellate Rule 65(D),
this Memorandum Decision shall not be
regarded as precedent or cited before
any court except for the purpose of
establishing the defense of res judicata,
collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT:

CHRIS P. FRAZIER
Marion County Public Defender Agency
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

MATTHEW D. FISHER
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

ANTHONY LOGAN,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 49A05-0606-CR-340
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Jeffrey Marchal, Commissioner
Cause No. 49G06-0602-FC-027095

February 6, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Anthony Logan appeals following his conviction for Operating a Vehicle After License Forfeited for Life. He argues that the trial court erred in admitting evidence acquired following a traffic stop, contending that the police officer did not have probable cause to conduct the stop. Finding that the officer did have probable cause to stop Logan, we affirm Logan's conviction.

Facts and Procedural History

The relevant facts are undisputed. On February 13, 2006, Logan was driving a green Ford Ranger pickup in Indianapolis. Indianapolis Police Department officer Timothy Huddleston ("Officer Huddleston") saw Logan make a wide right turn to head south on Keystone Avenue. Where Officer Huddleston encountered Logan, Keystone Avenue is a five-lane road with two southbound lanes, two northbound lanes, and a middle dual turn lane. After his wide right turn, Logan moved to the outside, westernmost southbound lane. As he continued south, Logan twice "abrupt[ly]" shifted out of the outside lane and into the inside lane before shifting back into the outside lane. Tr. p. 5. Officer Huddleston described Logan's movements as "crossing the dotted white line and back twice in a jerking motion, swerving motion." *Id.* at 80-81. The driver's side wheels of Logan's vehicle both fully crossed the dotted white line during both lane shifts, and Logan did not give turn signals for either lane shift. Officer Huddleston conducted a traffic stop and determined that Logan's driver's license had been suspended for life. Officer Huddleston issued Logan a ticket for unsafe lane movement under Indiana Code § 9-21-8-11 and arrested him.

The State charged Logan with Operating a Motor Vehicle after License Forfeited for Life, a Class C felony.¹ Logan filed a pre-trial Motion to Suppress Evidence, alleging that Officer Huddleston's traffic stop violated the Fourth Amendment to the United States Constitution and Article I, § 11 of the Indiana Constitution because it was conducted, among other things, without probable cause. Logan asked the trial court to suppress all evidence obtained following the stop of his vehicle. After a hearing, the trial court denied Logan's motion, having found that Officer Huddleston had probable cause to believe that Logan had violated three separate statutes: Indiana Code §§ 9-21-8-11 and -24, concerning lane changes generally, and Indiana Code § 9-21-8-25, concerning the use of turn signals during lane changes.

During a bench trial, Logan noted his continuing objection to the evidence that was the subject of his original motion to suppress and filed a Motion to Reconsider and Memorandum in Support of Renewed Motion to Suppress Evidence. The trial court denied Logan's motion to reconsider and renewed motion to suppress and, after hearing all the evidence, found Logan guilty as charged. The trial court then sentenced Logan to a prison term of six years. Logan now appeals.

Discussion and Decision

On appeal, Logan argues that the trial court erred in denying his motion to suppress. Specifically, Logan contends that Officer Huddleston lacked probable cause to believe that Logan had committed a traffic violation. Therefore, Logan urges, any

¹ Ind. Code § 9-30-10-17.

evidence acquired as a result of the traffic stop, e.g., Logan's lack of a driver's license, is inadmissible and should be suppressed. We disagree.

Initially, we note that although Logan originally challenged the admission of the evidence through a motion to suppress, he appeals following a completed trial and challenges the admission of such evidence at trial. The issue, then, is whether the trial court properly admitted the evidence at trial. *Miller v. State*, 846 N.E.2d 1077, 1080 (Ind. Ct. App. 2006), *trans. denied*. Generally, we review such decisions for an abuse of discretion. *Id.* However, the trial court based its admission of the evidence on its finding that Officer Huddleston had probable cause to conduct the traffic stop. The determination of probable cause is often a mixed question of law and fact, but when the facts relevant to the determination of probable cause are undisputed, as they are here, probable cause is a pure question of law, which we review *de novo*. *Moffitt v. State*, 817 N.E.2d 239, 246 (Ind. Ct. App. 2004), *trans. denied*.

Here, Officer Huddleston pulled Logan over and ticketed him for "unsafe lane movement" under Indiana Code § 9-21-8-11, which provides, in pertinent part:

Whenever a roadway has been divided into three (3) or more clearly marked lanes for traffic, the following rules apply:

(1) A vehicle shall be driven as nearly as practicable entirely within a single lane and may not be moved from the lane until the person who drives the vehicle has first ascertained that the movement can be made with safety.

In denying Logan's motion to suppress and admitting the challenged evidence at trial, the trial court determined that Officer Huddleston had probable cause to believe that Logan had violated this statute. Logan contends that the evidence is insufficient to support this

conclusion because the State offered no evidence that Logan failed to ascertain that his movement could be made with safety. He is incorrect.

As the State notes, the question is not whether Officer Huddleston *knew with certainty* that Logan had failed to determine that he could safely move his vehicle out of its lane of travel; rather, the question is whether Officer Huddleston *had probable cause to believe* that Logan had failed to do so. Probable cause is a fluid concept incapable of precise definition that is to be decided based on the facts of each case. *Creekmore v. State*, 800 N.E.2d 230, 233 (Ind. Ct. App. 2003). Officer Huddleston testified that Logan “made two abrupt shifts to the left out of its lane of travel” and into the adjacent lane. Tr. p. 5. Officer Huddleston described Logan’s movements as “crossing the dotted white line and back twice in a jerking motion, swerving motion.” *Id.* at 80-81. He also testified that both of Logan’s driver’s side wheels fully crossed the lane markings each time Logan swerved and that Logan did not use a turn signal for either lane shift. *See id.* at 5, 81.

This evidence is sufficient to support a finding of probable cause. Two facts are especially pertinent for our purposes: Logan *immediately* shifted back into his own lane of travel after each time he crossed the dotted line, and he failed to use his turn signal for either lane shift. Officer Huddleston’s testimony suggests that Logan never actually intended to move out of his lane of travel. As such, Officer Huddleston had probable cause to believe that Logan moved out of his lane of travel without first ascertaining whether he could safely do so, in violation of Indiana Code § 9-21-8-11. In other words, if Officer Huddleston could reasonably conclude that Logan’s movement was not

intentional, he could also conclude that Logan made the movement without first ascertaining that he could do so safely.

In further support of his position, Logan directs us to the Iowa Supreme Court's decision in *Iowa v. Tague*, 676 N.W.2d 197 (Iowa 2004), *reh'g denied*. There, the defendant, Tague, was driving in the inside northbound lane of a four-lane highway that was divided into two northbound lanes and two southbound lanes by a painted median. As Tague proceeded north, the driver's side wheels of his vehicle crossed over the "left edge line," but not the median, before returning to the roadway. *Id.* at 200-01. A police officer pulled Tague over for driving left of center, but the State of Iowa eventually charged Tague with operating under the influence. He filed a motion to suppress the evidence of his intoxication, claiming that the police officer did not have probable cause to make the stop. The trial court granted Tague's motion, and the State appealed.

At the hearing on the motion to suppress and on appeal, the State argued that in addition to the statute prohibiting driving left of center, Tague had also violated Iowa Code § 321.306, which provides, in pertinent part:

Whenever any roadway has been divided into three or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply:

A vehicle shall be driven as nearly as practical entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

The Iowa Supreme Court held that the police officer did not have probable cause to stop Tague for violating this statute, which is largely identical to Indiana Code § 9-21-8-11. *Id.* at 204. Specifically, the Court stated, "[T]he State failed to prove by a preponderance

of the evidence any objective basis to believe Tague's movement was done without first ascertaining that he could make such movement with safety." *Id.* at 203-04.

The facts of the instant case distinguish it from *Tague*. First, the police officer in *Tague* observed the defendant's vehicle cross the *edge* line of the road, whereas Officer Huddleston observed Logan's vehicle cross the dotted lane marking. Inasmuch as the relevant inquiry is whether a movement can be safely made, a shift over the edge line of a road does not pose as great a threat to other drivers as does a shift over the dotted line dividing two lanes of traffic. Again, Tague did not move his vehicle into another traffic lane, whereas Logan did. Second, Officer Huddleston described Logan's movements as "abrupt," "jerking," and "swerving." No such adjectives are found in *Tague*, and as discussed above, such observations support a finding of probable cause to believe that the driver of a vehicle has moved out of a lane of traffic without first ascertaining the safety of the movement.

Because Officer Huddleston had probable cause to stop Logan for violation of Indiana Code § 9-21-8-11, the trial court properly denied Logan's motion to suppress and properly admitted the evidence acquired as a result of that stop at trial.²

Affirmed.

BAILEY, J., and BARNES, J., concur.

² Because we affirm the trial court's decision under Indiana Code § 9-21-8-11, we need not address the trial court's finding that Officer Huddleston also had probable cause to stop Logan under Indiana Code §§ 9-21-8-24 and -25.